Testimony of

Kathy J. Metcalf

On behalf of the

Chamber of Shipping of America

On

REDUCTION OF AIR POLLUTION FROM SHIPS

And

BALLAST WATER MANAGEMENT

Before the

Coast Guard and Maritime Transportation Subcommittee

Of the

House Transportation and Infrastructure Committee

July 11, 2006

Good morning, Mr. Chairman and members of the subcommittee. My name is Kathy Metcalf and I am testifying on behalf of the Chamber of Shipping of America which represents 27 US based companies that own, operate or charter oceangoing tankers, container ships, and other merchant vessels engaged in both the domestic and international trades. The Chamber also represents other entities that maintain a commercial interest in the operation of such oceangoing vessels.

CSA is also a member of the Shipping Industry Ballast Water Coalition. The Coalition is a broad-based industry coalition formed to promote the development of a practical, effective, and comprehensive mandatory national ballast water management program in the United States which is protective of marine safety and the marine environment. Our coalition and its member associations represent the full spectrum of vessel types – tankers, bulk carriers, container vessels, roll-on/roll-off vessels, towing vessels, and barges, both US and foreign flag – that carry the preponderance of this nation's domestic and international commerce, the public US ports at which they call, and US maritime labor. Although the Coalition was unable to meet to discuss the proposed ballast water legislation due to the accelerated scheduling of this hearing, I can assure you that my testimony today is based on well-established positions included in testimonies offered by the Coalition over the past several years to a number of Congressional committees in both the House and Senate, including testimony provided to this subcommittee on March 25, 2004. Most recently the Coalition has provided testimony and additional comments to the Senate Commerce, Science and Transportation Committee in support of S 363, the Ballast Water Management Act of 2006, which has been favorably reported out of the committee and is awaiting action by the full Senate.

We appreciate the opportunity you have given us to provide testimony to your subcommittee on two issues of great importance to the maritime industry – ratification of MARPOL Annex VI by the United States and ballast water management. We are also pleased to be testifying with our colleague from the World Shipping Council on these issues of mutual interest. In order to avoid duplicative testimony, we will focus the majority of our oral testimony on ballast water issues while our colleague from the World Shipping Council will focus on MARPOL Annex VI ratification.

US RATIFICATION OF MARPOL ANNEX VI

CSA has had the honor for a number of years of serving as an industry advisor in the US delegation to the International Maritime Organization's Marine Environment Protection Committee (MEPC). During this period, the issue of air emissions from marine vessels was placed on the committee's agenda for discussion and action which, in 1997, resulted in the adoption of the Protocol of 1997 of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). This Protocol contains Annex VI to the Convention and entered into force on May 19, 2005. As of May 31, 2006, the Annex has been

ratified by 35 countries representing over 70% of the world's tonnage. Regrettably, the US is one of the few major maritime trading nations which have not yet ratified the Convention.

Annex VI, among other things sets limits on sulfur oxide and nitrogen oxide emissions from ship exhausts, prohibits emission of ozone depleting substances, establishes a global cap for sulfur content (4.5%) of marine fuels and contains provisions which allow for the designation of special sulfur oxide emission control areas (SECAs) in which more stringent controls on sulfur emissions from ships may be established through lower sulfur fuels (1.5%) and/or shipboard installation of emission control systems. In short, the Annex establishes a global system for the control of air emissions from ships and can serve as the foundation for future discussions aimed at decreasing further marine related air emissions. In fact, the MEPC is currently engaged in a review of the Annex with a focus on those provisions which may be modified to further reduce these emissions and the US is leading the discussion on a number of these issues. Additionally, the US Environmental Protection Agency is currently evaluating the need to establish SECAs in the US. To enable the US to effectively continue its leadership role in these discussions, to establish SECAs in our coastal waters and to ensure that all vessels calling in US ports, regardless of flag are subjected to the same types of controls, it is imperative that the US become a party to the Annex as soon as possible. Therefore, we strongly support prompt ratification of MARPOL Annex VI.

CREATION OF A COMPREHENSIVE US BALLAST WATER MANAGEMENT PROGRAM

1. Need for an internationally and nationally consistent ballast water management program.

CSA and the Shipping Industry Ballast Water Coalition strongly support the creation of a national ballast water management program that is environmentally protective, technologically and economically achievable, will parallel as closely as possible international requirements and is practical in the sense that it should not interfere with the existing efficiencies of the marine transportation system which is so important to our national economy. In order to achieve these goals, it is important to avoid what is an ever growing problem of state ballast water programs which create a patchwork quilt of varying requirements, many in conflict one with the other and most in conflict with existing federal and international requirements.

2. CSA and Coalition activities supporting creation of international and national ballast water management program.

Over the past decade, CSA and members of the Coalition have responded to virtually every legislative and regulatory initiative relating to ballast water management. We have also participated as industry advisors to the US

delegation and on the delegations of shipping related non-governmental organizations at the International Maritime Organization's Marine Environment Protection Committee (MEPC) which resulted in the adoption, in February 2004, of the International Convention for the Control and Management of Ship's Ballast Water and Sediments. While not yet in force, the Convention provides a detailed framework and requirements for the management of ship's ballast water and which will well serve the purpose of establishing international requirements for the truly international operations of maritime transportation. We fully support US ratification of the Convention and respectfully suggest that these provisions should provide the basic framework for US legislation addressing ballast water management so that domestic requirements will parallel the international requirements to the maximum extent possible.

3. Need for explicit and detailed legislation.

Traditionally, the regulated community has advocated for general legislation that mandates the creation of regulatory initiatives by agencies with jurisdiction over a particular regulated community. This position reflects the recognition that within these specific agencies, rest the necessary expertise to create the "nuts and bolts" of highly technical implementation programs. However, in the case of ballast water, CSA and the coalition have taken a contrary position and advocate for sufficiently detailed legislation which will provide the necessary certainty to the regulatory agencies, regulated community and every citizen of the United States. Certainly the necessary expertise resides within the agencies in this case; however, we can ill afford the delays in creation of a national ballast water management program that are so typically encountered as a result of complex regulatory initiatives. Once such example of this type of delay is discussed in detail in paragraph 7 below.

4. Need for a coordinated federal program which can be implemented by the states.

Shipping is international and so also should be the regulation of shipping. While this is not always possible, we believe that the regulation of shipping through international requirements is the correct way to comprehensively regulate the industry in a clear manner. However, we also recognize that there are cases where domestic legislation has been enacted which varies with international requirements, a sovereign right of any nation. Not without some pain, the industry has adjusted to these exclusively US provisions. Unfortunately, over the past several years, individual states have implemented their own unique ballast water management programs which vary from existing and proposed national and international requirements and we suggest that this trend will only continue without the inclusion of language which federally preempts state ballast water management programs. Failure to include such language would be catastrophic for the environment, the maritime industry, including ports, and undermine the progress which we can make on this issue by the establishment of a strong, uniform federal program administered consistently throughout our nation. Any

federal legislation should make clear that the ballast water management program created by the statute is the sole program established in the United States for the management and control of ballast water discharges.

5. Need for a coordinated federal program which establishes itself as the sole federal program by which ballast water management discharges will be managed.

We believe that any federal legislation should be the exclusive federal program which regulates ballast water management. As a result of a recent US District court decision, there is some question as to whether Congress intended to include ballast water discharges under the general provisions of the Clean Water Act and specifically the National Pollutant Discharge Elimination System (NPDES) permitting program. We strongly support inclusion of legislative text that clearly establishes Congressional intent to regulate ballast water management through the provisions of the more specific legislation which focuses on ballast water and not through the more general provisions of the Clean Water Act.

6. Need for a quantitative ballast water management performance standard and periodic review process.

As an example of the need for more, rather than less, detail in legislation, in the past, the industry has faced a conundrum with ballast water management that closely resembles the chicken or the egg dilemma i.e. which comes first, establishing a ballast water performance standard or waiting for technology to be developed and tested to define what is achievable. It is important to note that there is very little published peer-reviewed data that suggests the capabilities of developing technologies, although we are optimistic that the technologies will emerge from a number of shipboard and shore side testing programs which are underway around the world and on a variety of ship types. Recognizing the significant financial investment that is being placed on ship owners, it is critical that the first standard be established in quantitative terms and be achievable, recognizing future adjustments that can and should be made during periodic reviews of developing technologies. CSA and the Coalition strongly support the inclusion of this quantitative performance standard in federal legislation and not leave the establishment of the standard to the regulatory process. Our reasons for espousing this position are two-fold. First, I can unequivocally state that it was only when the fixed quantitative standard was established by IMO, that ship owners and technology developers alike were in a position to commit vast sums of financial and human resources to finding a solution to this problem through the initiation of pilot scale and shipboard studies which now include testing of systems actually installed aboard vessels. Once this quantitative standard was established, both ship owners and technology developers had a “hard target” at which to aim. While we agree that the concept of best available technology is a viable one, it is most appropriate as the general criteria by which later reviews and adjustments of the performance standard are made over time. Second, without specification of a quantitative performance standard in legislation, we

would expect the NEPA analysis which is triggered by any regulatory process which will establish an environmental discharge standard to take far longer than we or the marine environment can afford to wait. We believe inclusion of the quantitative performance standard in the legislation will significantly abbreviate the NEPA analysis which would be required in finalizing the regulations implementing the provisions of the statute.

Equally critical is the establishment, in legislation, of a rational and periodic technology review process by which the standard may be adjusted to more stringent levels as technology development progresses. In this regard, we believe that five key criteria should be established by which this review process is conducted. The five criteria are considerations of safety, environmental acceptability, practicability, cost effectiveness and biological effectiveness. By including these specific criteria, Congress will more clearly outline the charge to the agencies which will be responsible for implementing these periodic review programs.

7. Specific comments on the Ballast Water Management Act of 2006.

We very much appreciate the leadership role taken by this sub-committee over a number of years in progressing the issue of ballast water management and the control of invasive species. We also appreciate this opportunity to provide you with some specific comments on the provisions of your bill which we hope will further illuminate future discussions on this and other bills currently pending in both the House and Senate.

Section 4(b) – National Regulations. We strongly support the inclusion of language which establishes that a vessel need not deviate from its intended voyage or incur undue delay to meet the requirements of the regulations. This is a key provision to our industry since without its inclusion vessels engaged in coastwise trade or even short international voyages would find themselves in the position of adding significant time to their voyages for the purpose of going some pre-determined distance offshore to conduct a “mid-ocean” ballast water exchange. As an example, one ship owner has indicated that on a typical coastal run, one full day would be added to each 6 day voyage which translates to approximately 48 additional days per year solely for the conduct of ballast water exchange. At a $50,000 per day charter rate, the resulting $2,400,000 loss of revenue per year is severe indeed and this is only for one vessel. Further extrapolating this loss to the number of vessels engaged in coastwise or short international voyages translates to hundreds of millions of dollars of lost revenues for the execution of what is quite frankly a temporary and relatively ineffective “fix” until such time as ballast water treatment systems can be developed and approved for use aboard vessels. In short, the marginal environmental benefits accruing to a mid-ocean ballast water exchange are overwhelmed by the costs associated with the delay or deviation.

Section 6 – Ballast Water Management Evaluation and Demonstration Program. We strongly support the provisions of this section which will provide the critical foundation by which promising technologies can make those important steps from conceptual design to shore-side pilot to actual shipboard installations which are tested under real-world operating conditions.

Section 6(a) – Shipboard Technology Evaluation Program (STEP). We are especially appreciative of that provision which suggests that a variety of vessel types should be used in the STEP; however, we would suggest the addition of text to this section to reflect a similar need to test systems aboard vessels on a diversity of voyages, both domestic and international. We also note the inclusion of part of the IMO performance standard as the basis for acceptance into the STEP program, but suggest addition of text which requires that some considerations of that portion of the IMO standard addressing organisms less than 50 microns and indicator microbes should also be integrated into the STEP approval process, albeit these could be included as testing parameters for a system which was approved for STEP under the language proposed e.g. organisms over 50 microns in dimension. Without such considerations, vessels successfully participating in the STEP program may find themselves in a situation where they could not trade to foreign ports where the provisions of the IMO convention had already been adopted. Finally, we very much appreciate the grandfathering provision found in this section which would permit a vessel which participates in STEP to continue operations with the STEP tested system for the useful life of the vessel or ballast water management method, whichever is less.

Section 6(b) – Shipboard Technology Demonstration Program. We strongly support the vast majority of provisions of this section since it will result in the infusion of federal funds into what have, up to now, been very expensive ventures, funded in most cases by the private sector. Historically, we have found that most shipboard testing programs, from start to finish, will cost (equipment, installation, testing, analytical processes and hiring of appropriately credentialed scientists) at the very least $500,000, with most averaging in the $1,000,000 range and a few exceeding $5,000,000. We would also request your further consideration of proposed Section 6(b) (2) which requires that the installation and construction of alternative ballast water methods be performed in the United States. We believe this language requires further clarification and modification so as not to be so limiting. Understanding that US funding sources are meant to link with US based activities which provide benefits to US waters, but also acknowledging that a number of the more promising technologies in test at this time originate abroad, we would suggest that this section be revised to limit the expenditure of funds to shore based pilot programs conducted in the US or aboard vessels which trade to the US, regardless of nationality. This point is critical since the most valuable testing programs will be those which result in generated data from ballast water treatment systems tested under a variety of challenge conditions, on a variety of ship types and with ballast water from a variety of geographical locations.

Section 7 – National Ballast Water Discharge Standards. We support the provisions contained in this section but have reservations that certain provisions as contained in the IMO convention are not included here - namely those provisions relating to organisms less than 50 microns and indicator microbes. While we certainly support a phasing in of standards to reflect technological feasibility, we also believe that alignment with the IMO standard is important to ensure that vessels which are compliant with the US provisions will also be compliant with the global requirements. As contained in both the IMO convention and this section, the pre-implementation review process will provide the necessary reality check to assure that a standard is set which reflects technology at the time of implementation. We also very much support the provisions of Section 7(f) relating to existing equipment which assures that vessels with installed treatment systems will not have to retrofit a new system each time the standard is made more stringent. While we appreciate the logic of the implementation schedule as found in Section 7(h) which requires compliance with the standards not later than the earlier of 60 months after the standard takes effect or the end of the first drydocking after establishment of the standard, we believe that implementation of the initial performance standard should be stretched out over a longer period of time as is currently the case with the IMO convention. This position is based on concerns that sufficient numbers of "new" systems which meet the new standard will not be available over a five year period for the significant population of vessels which would have to comply with the requirements nor would be the necessary global infrastructure necessary to assure that spare parts and technical experts would be available to attend to a ship whose system had malfunctioned. Finally, we are very supportive of the provision in Section 7(h) that exempts vessels engaged in the coastwise trade from complying with the standards, although, we must admit that a permanent exclusion of coastwise vessels is likely not justified based on what we know today about secondary and tertiary transfers of invasive species which have been identified between and among ports on the West Coast of the United States. As an alternative and perhaps more appealing position to those who would oppose such a blanket exemption, we would suggest that this section could be modified to allow the Secretary to determine if available technology, as determined by the periodic reviews, could be installed on coastwise vessels, taking into account the often times, short duration, of coastwise voyages. We would also ask you to note that the coastwise dilemma is most severe at the current time when ballast water exchange is the only viable ballast water management process recognized which may, at times, require a vessel to divert offshore and remain there until a ballast water exchange can be completed (24 to 30 hours on average), adding significant off-hire costs. We are hopeful that once treatment systems are approved, most of the coastwise dilemma should resolve itself, since voyage duration will be far less an issue with systems which treat the ballast water upon uptake, discharge or both.

THE WAY FORWARD – TOWARDS AN EFFECTIVE US BALLAST WATER MANAGEMENT PROGRAM

As indicated at the outset of our testimony, we very much appreciate the leadership your subcommittee has exhibited over the past several years in progressing the ballast water and invasive species issues from identification of the problem, through to, what we are hopeful, will be an environmentally protective and operationally achievable national program. While we are very supportive of the provisions contained in your proposed legislation, we are also concerned that too much detail is left to the regulatory process which often fails to meet legislatively mandated timetables, many times for very justifiable reasons including the highly technical and lengthy process required under NEPA when an environmental discharge standard is to be created by regulation. In addition, providing additional detail in legislation provides a great deal of certainty to the regulated community as to the requirements their compliance program will have to meet. We stand ready to work with you and your colleagues in both the House and Senate to create this most needed national program and respectfully suggest that your bill and the provisions of pending S 363, when synthesized, would meet the environmental protection goals of our nation, the operational needs of the maritime industry as well as reflecting to the greatest extent possible, the international requirements as established by the IMO convention.

Thank you again for this opportunity to provide our comments. We would be pleased to answer any questions you may have.